

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FERRELL H. J.,

Plaintiff,

Case No. C22-5630-SKV

V.

**COMMISSIONER OF SOCIAL
SECURITY.**

Defendant.

ORDER REVERSING THE COMMISSIONER'S DECISION

Plaintiff seeks review of the ALJ's decision on his application for Disability Insurance
its (DIB). Having considered the ALJ's decision, the administrative record (AR), and all
randa of record, the Court **REVERSES** the Commissioner's final decision and
ANDS the matter for further administrative proceedings under sentence four of 42 U.S.C. §
0.

BACKGROUND

Plaintiff was born in 1971, has at least a high school education, and has a twenty-one year history in the military with combat. AR 34, 2291.

On February 16, 2016, Plaintiff applied for benefits, alleging disability as of September 1, 2015.¹ AR 239-40, 2285. Plaintiff's applications were denied initially and on

¹ Plaintiff filed prior DIB applications, including, most recently, in March 2014, for which the ALJ held there was good cause to reopen the application. AR 277-78, 2286.

1 reconsideration, and Plaintiff requested a hearing. AR 93-125. After the ALJ conducted a
 2 hearing on December 7, 2017, the ALJ issued a decision on June 18, 2018, finding Plaintiff not
 3 disabled. AR 13-92. The Appeals Council denied Plaintiff's request for review of the ALJ's
 4 decision, and Plaintiff sought judicial review. AR 7-12. The District Court reversed and
 5 remanded the case for the ALJ to reconsider several medical opinions pursuant to sentence four
 6 of 42 U.S.C. § 405(g). AR 2492-2503.

7 On remand, a new ALJ held a hearing on September 14, 2021, and, following that
 8 hearing, the case was again reassigned to a different ALJ, who held a second hearing on remand
 9 on March 2, 2022. AR 2347-2412; AR 2413-55. On April 29, 2022, the ALJ found that Plaintiff
 10 was disabled from November 1, 2013, through June 30, 2019. AR 2292.

11 THE ALJ'S DECISION

12 Utilizing the five-step disability evaluation process,² the ALJ found:

13 **Step one:** Plaintiff did not engage in substantial gainful activity from November 1, 2013,
 14 through June 30, 2019.

15 **Step two:** Plaintiff had the following severe impairments from November 1, 2013,
 16 through June 30, 2019: major depressive disorder, posttraumatic stress disorder
 ("PTSD"), multiple sclerosis, lumbar spine degenerative disc disease, and status-post left
 hip surgery.

17 **Step three:** Plaintiff's depression and PTSD medically equaled the listings from
 18 November 1, 2013, through June 30, 2019.³

19 The ALJ, however, subsequently found that Plaintiff's "disability ended in July 2019, the
 20 first month after the completion of the trial work period in which [he] engaged in substantial
 21 gainful activity." AR 2293. Plaintiff appealed the final decision of the Commissioner to this
 22 Court. Dkt. 5.

23 ² 20 C.F.R. §§ 404.1520, 416.920.

³ 20 C.F.R. Part 404, Subpart P., App. 1.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s denial of social security benefits when the ALJ’s findings are based on harmful legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As a general principle, an ALJ’s error may be deemed harmless where it is “inconsequential to the ultimate nondisability determination.” *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012), superseded on other grounds by 20 C.F.R. § 416.920(a) (citations omitted). The Court looks to “the record as a whole to determine whether the error alters the outcome of the case.” *Id.*

Substantial evidence is “more than a mere scintilla. It means - and means only - such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (citations omitted); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). The ALJ is responsible for evaluating symptom testimony, resolving conflicts in medical testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one rational interpretation, it is the Commissioner’s conclusion that must be upheld. *Id.*

DISCUSSION

There is one issue presented by this appeal: whether the ALJ failed to apply and/or misapplied the reentitlement period regulations. *See* 20 C.F.R. § 404.1592a.

1 **A. Legal Standards**

2 Social Security Administration (“SSA”) regulations set forth the criteria for determining
 3 whether a disability continues or ends. *See* 20 C.F.R. § 404.1594. They provide that a
 4 “disability can be found to have ended even though medical improvement has not occurred, if [a
 5 claimant] can engage in substantial gainful activity.” *Id.* However, before the Commissioner
 6 determines that an individual is no longer disabled because he is engaged in substantial gainful
 7 activity (“SGA”), the Commissioner first considers whether the individual is entitled to a “trial
 8 work period.” *Id.* § 404.1594(d)(5). A “trial work period” is a period of nine months – which
 9 need not be consecutive – in which an individual may test his ability to work and still be
 10 considered disabled. *Id.* § 404.1592(a).

11 A “reentitlement period” commences the month immediately following a disabled
 12 claimant’s ninth month of trial work, and ends “the last day of the 36th month following the end
 13 of [the claimant’s] trial work period.” *Id.* § 404.1592a(b); *see also* *Geschke v. Astrue*, No. C08-
 14 0323-MAT, 2008 WL 11389578, at *8 (W.D. Wash. Sept. 18, 2008), *aff’d*, 393 F. App’x 470
 15 (9th Cir. 2010) (explaining trial work and reentitlement periods). Unlike the trial work period, if
 16 a beneficiary works during the reentitlement period, the Commissioner may decide that the
 17 beneficiary’s disability has ceased because the beneficiary is engaged in substantial gainful
 18 activity. *See* 20 C.F.R. § 404.1592a(a)(1) (clarifying that “[t]he first time [claimant] work[s]
 19 after the end of [his] trial work period and engage[s] in substantial gainful activity, [the SSA]
 20 will find that [his] disability has ceased”).⁴ However, even if the SSA determines that a
 21 claimant’s disability “ceased” because the claimant engaged in SGA during the reentitlement

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 23 ⁴ This first time in which the individual works after the trial work period and in the reentitlement period,
 the Commissioner considers all relevant factors to determine whether the work is substantial gainful
 activity, including “unsuccessful work attempts.” 20 C.F.R. § 404.1592a(a)(1).

1 period, the claimant may nevertheless again receive benefits if they subsequently “stop doing
 2 substantial gainful activity in a month during the reentitlement period.”⁵ *Id.* §
 3 404.1592a(a)(2)(i).

4 The claimant need not file a new application if they stop performing SGA in subsequent
 5 months during the reentitlement period; instead, the SSA will simply start paying benefits again.
 6 *Id.* § 404.1592a(a). Furthermore, while the payment of benefits to a claimant may “cease”
 7 during the thirty-six month reentitlement period, a claimant’s “entitlement to disability benefits”
 8 does not “terminate” until after the end of the entitlement period. *Id.* § 404.1592a(a)(3)(i).
 9 Notably, the governing regulation provides that the termination of a claimant’s entitlement to
 10 disability benefits occurs “in the first month in which [the claimant] engaged in [SGA] *after the*
 11 *end of the reentitlement period.*” *Id.* (emphasis added).

12 B. Analysis

13 Here, the ALJ found that Plaintiff, while disabled, engaged in “services” that commenced
 14 his trial work period from September-November 2018, for a total of three months, after which
 15 Plaintiff took a break until January 2019. AR 2292. Plaintiff recommenced work in January
 16 2019, and the ALJ concluded that Plaintiff’s trial work period subsequently ended June 2019,
 17 after he had worked for nine non-consecutive months. AR 2292; 20 C.F.R. § 404.1592(a).
 18 Plaintiff does not dispute the ALJ’s findings regarding the trial work period.

19 Instead, Plaintiff contends the ALJ erred both in concluding that his “disability ended” on
 20 July 1, 2019, following the completion of his trial work period, and that Plaintiff “has not
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22 ⁵ After the first time a claimant’s benefits are stopped during the reentitlement period, in order determine
 23 whether the individual engages in substantial gainful activity in any given month, the Commissioner need
 only consider the claimant’s work and earnings for that month, and need not consider whether this work
 was an unsuccessful work attempt. See 20 C.F.R. § 404.1592a(a)(2)(i).

1 become disabled again since that date.” *See* AR 2293. Plaintiff argues that the ALJ erred in so
 2 finding because the ALJ failed to properly apply the requisite reentitlement regulation, 20 C.F.R.
 3 § 404.1592a, which takes effect following the expiration of the nine-month trial work period.
 4 Dkt. 11 at 3-4. Plaintiff contends that he stopped working during his reentitlement period at the
 5 end of 2020, and that he was, therefore, entitled to disability benefits from the end of 2020 until
 6 the expiration of his reentitlement period on June 30, 2022, and requests that the Court remand
 7 for an award of benefits for this time period.⁶ Dkt. 11 at 4-6.

8 The Commissioner counters that reentitlement was not at issue before the ALJ because
 9 the ALJ awarded a closed period of benefits, having determined that Plaintiff’s disability ended
 10 on July 1, 2019 following the completion of his trial work period. Dkt. 16 at 4-6 & n.6; AR
 11 2293. The Commissioner further argues that Plaintiff’s SGA “after completion of his trial work
 12 period. . . [was] alone, sufficient reason for the ALJ to find that his disability ended.” Dkt. 16 at
 13 7 (citing 20 C.F.R. § 404.1594(d)(5)). As such, the Commissioner argues that Plaintiff was “not
 14 automatically entitled to a reentitlement period,” but instead needed to file a separate request for
 15 reinstatement of his benefit eligibility. Dkt. 16 at 4-6 & n.6, 7. In sum, the Commissioner’s
 16 argument essentially appears to be that Plaintiff was not entitled to an extended period of
 17 eligibility under the reentitlement regulation because the ALJ properly determined that his
 18 disability ended June 30, 2019, due to Plaintiff’s performance of SGA following the expiration
 19 of the trial work period, and that the ALJ’s finding thereby triggered a termination in his
 20 disability benefits.

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 23 ⁶ Assuming Plaintiff was entitled to a “reentitlement period” in this case, it would have begun the month
 immediately following Plaintiff’s ninth month of trial work, which in this case would have been July 1,
 2019, and would have ended June 30, 2022, more than two months after the ALJ’s April 2022 decision.
See 20 C.F.R. § 404.1592a(b).

1 The Court, however, concludes that the record and the ALJ’s decision lack sufficient
2 clarity for the Court to render a decision on the merits. In so holding, the Court notes that the
3 Commissioner invites it to broadly interpret the ALJ’s determination that Plaintiff’s disability
4 “ended” as a factual finding based on other evidence not cited by the ALJ in his decision. *See*
5 AR 2293; Dkt. 16 at 6 (citing to evidence not addressed or cited by the ALJ, including Plaintiff’s
6 academic records and medical records). The Court is, however, “constrained to review the
7 reasons the ALJ asserts,” and, here, the ALJ asserted none. *Brown-Hunter v. Colvin*, 806 F.3d
8 487, 494 (9th Cir. 2015); *see also Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (stating that
9 the court “review[s] only the reasons provided by the ALJ in the disability determination and
10 may not affirm the ALJ on a ground upon which he did not rely”).

11 The ALJ here made no explicit factual findings to support the July 1, 2019 disability end
12 date beyond the ALJ’s related determination that Plaintiff’s trial work period concluded on June
13 30, 2019. *See* AR 2291-93. As such, it appears that the ALJ chose the July 1, 2019 end date for
14 Plaintiff’s closed period of benefits based solely on the completion of Plaintiff’s trial work
15 period and his performance of SGA. The ALJ neither addressed nor explained whether Plaintiff
16 qualified for an additional thirty-six month period to test his ability to work under the
17 reentitlement regulation, 20 C.F.R. § 404.1592a. *See* AR 2292-93.

18 Given this lack of clarity, the Court remands to the Commissioner to address the issues
19 listed below. *See Brown-Hunter*, 806 F.3d at 492 (Social Security Administration “[must] set
20 forth the reasoning behind its decisions in a way that allows for meaningful review.”). In doing
21 so, the Court acknowledges the Commissioner’s argument that an ALJ “has no involvement” in a
22 reentitlement claim. Dkt. 16 at 5. However, the Commissioner did not cite to any legal authority
23 or otherwise in support, and the Court is unable to ascertain support for the proposition in the

1 controlling regulations. Moreover, the Court notes that, contrary to the Commissioner’s
 2 statement, ALJs have been involved in addressing reentitlement benefits in other cases on point.
 3 *See Roam v. Astrue*, No. C07-5662KLS, 2008 WL 4181680, at *2 (W.D. Wash. Sept. 4,
 4 2008)(noting ALJ’s holding that “benefits were due during the reentitlement period”); *Galanos*
 5 *v. Astrue*, No. 3:10-CV-05849-JCS, 2013 WL 1365901, at *7 (N.D. Cal. Apr. 3, 2013) (noting
 6 that “ALJ found that following the completion of the trial work period, Plaintiff was engaged in
 7 substantial gainful activity in the reentitlement period”); *see also, e.g., Varney v. Astrue*, No.
 8 CIV. 09-3105-KI, 2011 WL 1527362, at *4 (D. Or. Apr. 20, 2011) (holding that the ALJ erred
 9 where the “ALJ neglected to make any findings as to whether [the claimant] met any of the tests
 10 for performing SGA during her reentitlement period”). Nevertheless, given the uncertainty, the
 11 Court remands *to the Commissioner* to determine the appropriate person, entity, or “effectuating
 12 component” – whether it is the ALJ or otherwise – to address the below issues on remand.

13 1. The Commissioner is required to make a finding as to whether Plaintiff qualified
 14 for an extended period of eligibility to test his ability to work following the completion of the
 15 trial work period in June 2019 under the reentitlement regulation, 20 C.F.R. § 404.1592a.⁷

16 a. To the extent that the Commissioner concludes that Plaintiff did *not*
 17 qualify for an extended period of eligibility under the reentitlement period, the Commissioner is

20 ⁷ In so ordering, the Court acknowledges that under 20 C.F.R. § 404.1592a(a), a Plaintiff qualifies for
 21 reentitlement if they complete a trial work period “and continue to have a disabling impairment.” Section
 22 404.1594(f)(1), upon which the ALJ appears to have relied here (AR 2293), itself references section
 23 404.1594(d)(5), which suggests that the fact that an individual is “currently engaging in substantial
 gainful activity” is not a factor considered under section 404.1511 when determining whether a
 beneficiary continues to have a disabling impairment(s) “for purposes of deciding [] eligibility for a
 reentitlement period [under Section 404.1592a].” 20 C.F.R. § 404.1594(d)(5). Thus, to the extent the ALJ
 may have deemed Plaintiff ineligible for the reinstatement period based upon Plaintiff’s work at an SGA
 level, such a finding does not appear to be consistent with the Court’s understanding of the governing
 regulations.

required to set forth the factual and legal basis for the conclusion with sufficient clarity and specificity to allow for meaningful review.

b. To the extent that the Commissioner concludes that Plaintiff *did* qualify for an extended period of eligibility under the reentitlement period, the Commissioner should:

- i. Specify when the reentitlement period began;
 - ii. when the reentitlement period ended;
 - iii. whether and when Plaintiff's disability "ceased" for purposes of 20 C.F.R. § 404.1592a(a)(1);
 - iv. identify the month(s) for which Plaintiff was entitled to payment of benefits during the applicable reentitlement period; and
 - v. take any and all administrative action necessary to process appropriately Plaintiff's case.

CONCLUSION

For the reasons set forth above, the Commissioner's final decision is **REVERSED** and this case is **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C. § 405(g) as described above.

Dated this 11th day of May, 2023.

S. Kate Vaughan
S. KATE VAUGHAN
United States Magistrate Judge